SBCivil Writ Petition No.4270/1996

Badri Singh
v.
State of Rajasthan & Ors.

Date of Order :: 27th April, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. N.S.Acharya, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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A challenge is given to the judgment dated 21.8.1996 passed by Board of Revenue for Rajasthan, Ajmer in Revision Petition No.133/92/Colo/Bikaner by way of filing the instant petition for writ under Articles 226 and 227 of the Constitution of India.

By judgment impugned the Board of Revenue dismissed the revision petition preferred by the petitioner and affirmed the order dated 27.3.1992 passed by Commissioner Colonisation holding that the allotment of small patch to the petitioner's father indicates malafides and accordingly the allotment was cancelled.

The factual matrix required to be noticed for adjudication for instant petition for writ is that while exercising powers under Rajasthan Colonisation (Allotment and Sale of Government Lands in Indira Gandhi Canal Colony Area) Rules, 1975 (hereinafter referred to as “the Rules of 1975”) 17 bighas of land was allotted to the petitioner's father under an order

dated 5.7.1985 passed by the allotment officer i.e. Assistant Commissioner, Colonisation, Chhattargarh. The father of the petitioner then applied for allotment of five bighas of land as small patch which was allotted in his favour by order dated 5.7.1985 passed by the allotment officer. The small patch as referred above was allotted to the petitioner on basis of inspection report submitted by the patwari of the patwar circle concerned stating therein that in "rakba" where the petitioner is in cultivatory possession of the land measuring 17 bighas, total 8 bighas of land is available, out of that 3 bighas is under proposed acquisition, as such 5 bighas of land could be allotted as small patch. The remaining 3 bighas of land was also allotted to the petitioner under an order dated 17.3.1988 as a small patch. The Commissioner, Colonisation, by his order dated 27.3.1992 set aside the allotment of small patch made in favour of the petitioner by order dated 4.9.1987 and 17.3.1988 while exercising powers under Rule 23(2) of the Rules of 1975. The Commissioner, Colonisation held that the land measuring 8 bighas could not be treated as small patch, therefore, the allotting authority by bifurcating the land in 5 bighas and 3 bighas allotted small patch to the petitioner by two different orders and that indicates malafides. The petitioner being aggrieved by the order dated 27.3.1992 preferred a revision petition under Rule 23 (2) of the Rules of 1955 which too came to be rejected

by judgment impugned dated 21.8.1996. The Board of Revenue while affirming the order dated 27.3.1992 held that the allotments of small patch were made in land allotted in the same khasra number and in peace meal within the prescribed limits of 5 bighas in each case that indicates malafides in allotment process with view to extend benefit to the petitioner's father.

While giving challenge to the judgment dated 21.8.1996 passed by Board of Revenue for Rajasthan, Ajmer and the order dated 27.3.1992 passed by the Commissioner, Colonisation, Bikaner, it is contended by counsel for the petitioner that the courts below erred while not taking into consideration the report submitted by the patwari on basis of which a small patch area was allotted to the petitioner that in unambiguous terms mentions about proposed acquisition of 3 bighas of land for certain other purpose. It is further stated by counsel for the petitioner that there could not be any malafides as the cost of small patch is quite higher than the market price of the land payable under the Rules of 1975.

A reply to the writ petition has been filed on behalf of respondent State stating therein that in a systematic manner entire land of square No.74/7 was sought to be grapped by making application for allotment of small patch at different times. The entire 8 bighas of land was government land and could

not have been bifurcated for different allotment to the same person. An additional affidavit sworn-in by the petitioner is filed stating therein that through the land in question a pacca khala is passing through kilas No.15, 14, 18, 19 and 21 dividing the entire square in two parts and about one bigha land was already utilised for construction of khala. According to the petitioner the small patch of land which was allotted to his father falls in between the land that was allotted by order dated 5.7.1985 dividing the land in two parts and after allotment of small patch it becomes a compact block.

Heard counsel for the parties.

The allotting authority allotted 5 bighas of land to the petitioner as a small patch on basis of a report submitted by the patwari. The patwari in his report stated that out of 8 bighas of land available in square No.74/7 3 bighas of land is under proposed acquisition and, therefore, 5 bighas of land could be allotted as a small patch. The allotting authority, therefore, allotted 5 bighas of land as a small patch to father of the petitioner. The rest 3 bighas of land was allotted to the petitioner's father as a small patch subsequently not being required for acquisition. It is true that in total 8 bighas of land is allotted to the petitioner as a small patch but the facts does not prove any malafides in it. The allotting authority

acted upon the report of the patwari which is not at all doubted by the Colonisation Commissioner or by the Board of Revenue. It is also pertinent to note that the cost of small patch is higher than the market price of the land which is required to be sold under the Rules of 1975, as such no loss is caused to the government by making allotment of land to the petitioner in small patches. It is also pertinent to note that as a consequence of subsequent amendment under the Rules of 1975 a medium patch can also be allotted to the extent of 10 bighas of irrigated land to the petitioner being in possession of the land in dispute from last so many years in totality of facts and circumstances of the case. The interest of justice demands to permit the petitioner to hold the land which was allotted to his father as a small patch.

In view of whatever discussed above this petition for writ deserves acceptance. The same, therefore, is allowed. The judgment impugned dated 21.8.1996 passed by the Board of Revenue as well as the order dated 27.3.1992 passed by Commissioner, Colonisation are hereby quashed with no order as to costs.

(GOVIND MATHUR),J.

kkm/ps.